

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXX's.

September 8, 2003
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: April 18, 2003

Case Number: TSO-0036

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy Operations Office (DOE) suspended the individual's access authorization under the provisions of Part 710.^{2/} As set forth in this Decision, I have determined on the basis of the evidence and testimony presented that the individual's security clearance should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

^{2/} On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication and govern the present Decision.

the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual was granted a security clearance by DOE as a condition of his employment with a DOE contractor. However, the local security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on February 19, 2003, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsection j. More specifically, the Notification Letter alleges that the individual has "[b]een, or is, a user of alcohol habitually to excess or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or suffering from alcohol abuse," 10 C.F.R. § 710.8(j) (Criterion J). The bases for this finding, as stated in the Notification Letter, are summarized below.

On June 28, 2002, the individual was arrested and charged with Assault following an altercation at his home with his wife. During a subsequent Personnel Security Interview conducted on August 7, 2002, the individual stated that he had been drinking on the evening of his arrest, and that he had an "alcohol problem" in the past. On October 21, 2002, the individual was referred to a DOE consultant psychiatrist (DOE Psychiatrist) who evaluated the individual and diagnosed him with Alcohol Abuse by History. In his report, the DOE Psychiatrist stated that the individual had apparently not reached a suitable level of reformation and rehabilitation, in view of the domestic incident with his wife.

In a letter received by the DOE Office of Hearings and Appeals on April 18, 2003, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 21, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist. Apart from testifying on his own behalf, the individual called his wife, his counselor, his supervisor and three co-workers who are also friends of the individual. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "Exh.".

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual began working with a DOE contractor in October 1995, and was granted a DOE security clearance as a condition of his employment. During 2002, the individual submitted an updated Questionnaire for Sensitive Positions containing information that raised several concerns for DOE Security. A Personnel Security Interview (PSI) was therefore conducted with the individual on August 7, 2002, to address these matters. Each of the matters raised during the PSI was resolved, with the exception of the individual's arrest on June 28, 2002, for assaulting his wife and associated security concerns regarding the individual's use of alcohol. The individual's history of alcohol use and the circumstances of the domestic assault incident are described below.

The individual is a Vietnam veteran and was honorably discharged from military service in 1969. During the 1970's, the individual drank regularly, during the week and on weekends, sometimes to the point of intoxication. The record is unclear as to the extent to which the individual's alcohol consumption was excessive during this time period. However, the individual became concerned with his drinking in 1977, when his physician informed the individual that his alcohol consumption may be contributing to a rectal bleeding problem. In addition, the individual's son was diagnosed as autistic and the individual began having marital problems with his first wife. As a result of these factors, the individual made the decision in 1979 to quit drinking. The individual began attending Alcoholics Anonymous (AA) on his own volition.

The individual remained abstinent from alcohol for nineteen years, from 1979 to 1998. During this time, the individual continued to attend AA meetings, serving as an AA sponsor. The individual also found the AA setting convenient for meeting people and socializing, and indeed met his present wife at an AA meeting in 1996. The individual states that in 1998, his wife persuaded him that he was not an alcoholic and could drink socially. From 1998 to June 2002, the individual consumed alcohol socially and at home in moderation, drinking brandy and sometimes beer. According to the individual, a fifth of brandy would usually last him two to three weeks. There is no indication that the individual indulged in excessive drinking during this time period.

On the day of his arrest, June 28, 2002, the individual states that he had one drink, a shot and a half of brandy with soda, around five o'clock in the evening. The individual later went out to the family camper in the back of his home, along with his grandchild and a two-month-old puppy he had recently acquired, and decided to take a nap. At around 11:00 p.m., his wife came home in an inebriated state, having consumed ten beers (in her own estimation) during the day with her girlfriend. According to the individual, the wife became angered by the fact the individual had left lights on in the house. The wife came out to the camper, abruptly awakened the individual and demanded that he give her the puppy. The individual recounts that he refused, fearing for the dog's safety, and his wife then became forceful. As he was lying down, the individual pushed his wife away with his foot causing her to fall and hurt

her ear. This enraged his wife and she physically assaulted the individual. Unable to subdue his wife, the individual called the police. Since both parties showed signs of injury, the police arrested the individual and his wife on a charge of Assault.

On the basis of this information received during the PSI, the decision was made by DOE Security to refer the individual to the DOE Psychiatrist who evaluated the individual on October 21, 2002. In his report, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse by History. The DOE Psychiatrist notes in his report that during his interview, the individual stated that he consumed alcohol one to four times per week. Thus, the DOE Psychiatrist concludes in his report: "[The individual has] a history of reported alcohol problems in the past and at this point is currently drinking. Given the severity of his alcohol problems with obvious recent marital difficulties involving alcohol, it appears that [the individual] in fact has not reached a suitable level of rehabilitation and/or reformation."

Upon receiving notice in December 2002 that his security clearance was suspended, the individual ceased all consumption of alcohol and has not had a drink since that time. The individual attended a few AA sessions but elected not to continue since he has had no difficulty in maintaining his sobriety. The individual joined a church and recommitted himself to his marriage. The individual attends counseling sessions at a Christian Counseling Center every two to three months. Although the individual has discussed the Assault arrest with his counselor, their sessions do not provide alcohol treatment but focus on the individual's marriage and family relationships.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion J; Alcohol Use

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse by History. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In these proceedings, it was recognized that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. On the basis of the DOE Psychiatrist's diagnosis, I find that DOE Security properly invoked Criterion J in suspending the individual's security clearance. Accordingly, I will turn to whether the individual has presented sufficient evidence to mitigate the security concerns of DOE. For the following reasons, I have determined that the individual's security clearance should be restored.

B. Mitigating Evidence

I must initially observe that there are salient weaknesses in the DOE Psychiatrist's diagnosis, Alcohol Abuse by History. The DOE Psychiatrist testified that this diagnosis was based upon "significant problems reported in the history that would

meet the diagnosis of alcohol abuse.” Tr. at 28.^{3/} However, that diagnosis is based upon assumed incidents which occurred long ago, and the record contains very little concerning problems experienced by the individual that may have led to his decision to stop drinking in 1979. The individual recounted that he made this decision based upon information he received from his physician that alcohol consumption might be contributing to his rectal bleeding problem. Tr. at 50; Exh 7 (PSI) at 21. The individual also stated that he was experiencing marital difficulties at the time,^{4/} and he made the decision to stop drinking on his own volition for sake of his autistic son. Exh. 7 at 4, 25. According to the report of the DOE Psychiatrist, the individual “describes himself in the past as being an alcoholic.” Exh. 8 at 1. Notwithstanding, the record is absent of any alcohol-related incidents that typically underlie a diagnosis of Alcohol Abuse. See, e.g., *Personnel Security Hearing*, Case No. VSO-0487, 28 DOE ¶ 82,840 at 85,927 n. 5(2002) (citing criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)* for Substance Abuse, Alcohol).^{5/} The individual was abstinent from 1979 to 1998,^{6/} and thus any such problems or incidents would have occurred more than twenty years ago.

I further find that while the individual resumed drinking in 1998, there have been no reported incidents of excessive drinking on his part. Instead, the testimony of the individual's wife, counselor, friends and co-workers, as well as letters of support from his stepchildren and personal physician, uniformly support the individual's assertion that he has consumed alcohol only in moderation since he resumed drinking in 1998. Tr. at 13-14, 65, 71, 97-98; Exh. 4. Moreover, the record supports the individual's

^{3/} The DOE Psychiatrist also diagnosed the individual with Major Depression, Recurrent by History, Exh. 8 at 3. The record indicates that the individual has had two bouts of major depression for which he received medication and psychiatric treatment. Tr. at 52; Exh. 7 (PSI) at 6-7. I find that this mental condition is not relevant to the matters raised in the Notification Letter.

^{4/} The DOE Psychiatrist confirmed that he has no information that the individual's marriage difficulties were caused by his consumption of alcohol. Tr. at 45-46.

^{5/} Interestingly, the DOE Psychiatrist himself noted that “alcohol abuse refers to use of alcohol to the extent that it causes problems in marital relationships, work, outside relationships or legal problems.” Tr. at 42. However, the DOE Psychiatrist cites no such incidents in his report.

^{6/} The DOE Psychiatrist's report contains a misleading statement that in “1982 the patient was treated as an outpatient of alcohol detoxification.” Exh. 8 at 2. The individual clarified during his testimony, however, that he underwent an outpatient alcohol education program in 1982, which he took voluntarily for his own edification although he had been sober since 1979. Tr. at 53.

assertion that the June 28, 2002 incident of domestic assault was not the result of excessive drinking by the individual, but by his wife. The individual has been consistent in his account that on that day, he had only one drink at about 5:00 p.m. and the incident was initiated by his wife, who came home inebriated at about 11:00 p.m. Exh. 7 (PSI) at 14-15; Exh. 4 at 1. At the hearing, the individual's wife was forthright and convincing in corroborating the individual's account, testifying that: "I actually was the one that was intoxicated. I had been out with one of my girlfriends, and I consumed too much alcohol, and I felt I provoked that incident. . . . I was intoxicated, but I couldn't tell that he had had anything to drink." Tr. at 10-11.^{7/} The Police Report also supports the individual's assertion that he had not been drinking excessively on that evening. The Police Report states that "[the individual's wife] had a strong smell of alcohol on her breath" but makes no such observation with regard to the individual. Exh. 4. Finally, I find it telling that the individual himself called the police. Exh. 7 (PSI) at 16.

In his report, the DOE Psychiatrist states in describing the June 2002 incident that "[a]pparently he and his wife, while both were intoxicated, argued and hit each other." Exh. 8 at 1. Upon questioning at the hearing, however, the DOE Psychiatrist conceded regarding the individual that "I believe that alcohol was involved. I don't recall whether to the point of intoxication or not." Tr. at 26. The DOE Psychiatrist clarified on further questioning that in rendering his diagnosis, he did not find it significant that the individual was not intoxicated on the evening of his arrest but that the individual was drinking at all. Tr. at 40-41. In the view of the DOE Psychiatrist, "[S]omeone who continues to use alcohol after having either admitted to or have been diagnosed with an alcohol problem is a recurrent user. There's no getting around that. If a person starts drinking again after they've had a problem in the past or a period of sobriety, then they've relapsed . . . that's where he was at the time of his evaluation. . . . [T]he going attitude at this point is someone with an alcohol problem, an alcoholic, is an alcoholic. You're either using or not using, abstinent or recurrent drinking." Tr. at 41-42.

Thus, the diagnosis of the DOE Psychiatrist is not based upon the occurrence of any alcohol-related incidents, but merely upon the individual's admission that he had an alcohol problem over twenty years ago. It is apparently the view of the DOE Psychiatrist that anyone who admittedly has had an alcohol problem should never

^{7/} The individual's wife also corroborated statements made by the individual during the PSI that it was she who persuaded the individual in 1998 that he could begin to drink socially, but that the individual had not indulged in excessive drinking since that time: "When we first met, he did not drink at all. Probably through my encouragement, I got him to have a drink or two, and that's the most I've ever seen [the individual] drink [T]he most I'd ever seen him drink was probably two drinks at a time in any one particular occasion." Tr. at 10-11; *see* Exh. 7 (PSI) at 25, 28-30.

drink, irrespective of when the problem occurred in their life or subsequent demonstrated ability to control alcohol consumption. The individual was abstinent for nineteen years and there is no evidence of excessive drinking on the part of the individual after he resumed drinking in 1998.^{8/} In similar cases, Hearing Officers have found that the opinion of a DOE psychiatrist did not support a negative determination regarding an individual's eligibility for access authorization. *See Personnel Security Hearing*, Case No. TSO-0010, 28 DOE ¶ 82,924 at 86,321-22 (2003) (granting individual's access authorization where the individual's heavy drinking occurred half a lifetime ago, and he reformed his drinking behavior ten years ago)^{9/}; *see also Personnel Security Hearing*, Case No. VSO-0565, 28 DOE ¶ 82,905 (2003) (clearance restored where no recent evidence of an alcohol problem). Similarly in the present case, I attach minimal significance to the diagnosis of the DOE Psychiatrist in evaluating the individual's eligibility to hold an access authorization.

Furthermore, I find that any residual security concern stemming from the DOE Psychiatrist's diagnosis has been overcome by the individual. In his report, the DOE Psychiatrist opined: "[The individual has] a history of reported alcohol problems in the past and at this point is currently drinking. . . . [I]t appears that [the individual] in fact has not reached a suitable level of rehabilitation and/or reformation." Exh. 8 at 3. However, information presented at the hearing led the DOE Psychiatrist to change his assessment in this regard. The individual testified that he was shocked and concerned when he received notification on December 13, 2002, that his security clearance had been suspended, and he therefore made the decision to stop drinking altogether.^{10/} The individual's wife corroborated the individual's testimony that he has not had a drink

^{8/} The DOE Psychiatrist's report states that the individual reported drinking one to four times a week. Exh. 8 at 1. The DOE Psychiatrist did not consider this to be excessive in and of itself, but maintained his opinion that the individual should not be drinking since he admittedly once had an alcohol problem, albeit more than twenty years ago. Tr. at 42-43.

^{9/} In the cited case, the Hearing Officer found that "the DOE psychiatrist's interpretation of the facts is negatively skewed, and places too much emphasis on events that occurred many years ago." 28 DOE at 86,321. In the present case, the DOE Psychiatrist does not rely upon a specific event or a previous diagnosis, but solely the individual's belief that he had an alcohol problem during the 1970's. Interestingly, the individual's wife testified that although the individual made the decision to stop drinking in 1979 and began attending AA, "[h]is parents didn't even believe he was an alcoholic. When I've talked to his mother and father, they thought it was ludicrous when he attended AA, because I don't think they felt he had an alcoholic problem." Tr. at 14.

^{10/} During the PSI, the individual stated that following the June 2002 domestic altercation, both he and his wife reduced their drinking to once or twice a week, in moderate amounts. Exh. 7 (PSI) at 19.

during the seven months since that time. Tr. at 15. The individual further presented a summary of steps he has taken to change his lifestyle, including joining a church and attending counseling sessions every two to three months. Upon receiving this evidence, the DOE Psychiatrist modified his opinion of the individual's efforts toward reformation and rehabilitation, stating that "I think that his risk of relapse is low given the steps that he's outlined here." Tr. at 63. On the basis of this revised assessment of the DOE Psychiatrist, taken on balance with his tenuous diagnosis, I conclude that the security concerns associated with the individual's alcohol use have been adequately mitigated.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(j) in suspending the individual's access authorization. For the reasons I have described above, however, I find that the individual has mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The Manager of the Operations Office or the Director, Office of Security Affairs, may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: September 8, 2003